



# Arbitration Act 1996

## 1996 CHAPTER 23

### PART I

#### ARBITRATION PURSUANT TO AN ARBITRATION AGREEMENT

##### *Introductory*

#### **1 General principles.**

The provisions of this Part are founded on the following principles, and shall be construed accordingly—

- (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
- (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
- (c) in matters governed by this Part the court should not intervene except as provided by this Part.

#### **2 Scope of application of provisions.**

- (1) The provisions of this Part apply where the seat of the arbitration is in England and Wales or Northern Ireland.
- (2) The following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined—
  - (a) sections 9 to 11 (stay of legal proceedings, &c.), and
  - (b) section 66 (enforcement of arbitral awards).
- (3) The powers conferred by the following sections apply even if the seat of the arbitration is outside England and Wales or Northern Ireland or no seat has been designated or determined—
  - (a) section 43 (securing the attendance of witnesses), and
  - (b) section 44 (court powers exercisable in support of arbitral proceedings);

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but the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside England and Wales or Northern Ireland, or that when designated or determined the seat is likely to be outside England and Wales or Northern Ireland, makes it inappropriate to do so.

- (4) The court may exercise a power conferred by any provision of this Part not mentioned in subsection (2) or (3) for the purpose of supporting the arbitral process where—
  - (a) no seat of the arbitration has been designated or determined, and
  - (b) by reason of a connection with England and Wales or Northern Ireland the court is satisfied that it is appropriate to do so.
- (5) Section 7 (separability of arbitration agreement) and section 8 (death of a party) apply where the law applicable to the arbitration agreement is the law of England and Wales or Northern Ireland even if the seat of the arbitration is outside England and Wales or Northern Ireland or has not been designated or determined.

### **3 The seat of the arbitration.**

In this Part “the seat of the arbitration” means the juridical seat of the arbitration designated—

- (a) by the parties to the arbitration agreement, or
  - (b) by any arbitral or other institution or person vested by the parties with powers in that regard, or
  - (c) by the arbitral tribunal if so authorised by the parties,
- or determined, in the absence of any such designation, having regard to the parties’ agreement and all the relevant circumstances.

### **4 Mandatory and non-mandatory provisions.**

- (1) The mandatory provisions of this Part are listed in Schedule 1 and have effect notwithstanding any agreement to the contrary.
- (2) The other provisions of this Part (the “non-mandatory provisions”) allow the parties to make their own arrangements by agreement but provide rules which apply in the absence of such agreement.
- (3) The parties may make such arrangements by agreeing to the application of institutional rules or providing any other means by which a matter may be decided.
- (4) It is immaterial whether or not the law applicable to the parties’ agreement is the law of England and Wales or, as the case may be, Northern Ireland.
- (5) The choice of a law other than the law of England and Wales or Northern Ireland as the applicable law in respect of a matter provided for by a non-mandatory provision of this Part is equivalent to an agreement making provision about that matter.

For this purpose an applicable law determined in accordance with the parties’ agreement, or which is objectively determined in the absence of any express or implied choice, shall be treated as chosen by the parties.

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## **5 Agreements to be in writing.**

- (1) The provisions of this Part apply only where the arbitration agreement is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Part only if in writing.

The expressions “agreement”, “agree” and “agreed” shall be construed accordingly.

- (2) There is an agreement in writing—
- (a) if the agreement is made in writing (whether or not it is signed by the parties),
  - (b) if the agreement is made by exchange of communications in writing, or
  - (c) if the agreement is evidenced in writing.
- (3) Where parties agree otherwise than in writing by reference to terms which are in writing, they make an agreement in writing.
- (4) An agreement is evidenced in writing if an agreement made otherwise than in writing is recorded by one of the parties, or by a third party, with the authority of the parties to the agreement.
- (5) An exchange of written submissions in arbitral or legal proceedings in which the existence of an agreement otherwise than in writing is alleged by one party against another party and not denied by the other party in his response constitutes as between those parties an agreement in writing to the effect alleged.
- (6) References in this Part to anything being written or in writing include its being recorded by any means.

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